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Patent
Attorney's Docket No. 1032469-000007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of)	
Sam T. LINDHOLM et al.)	Group Art Unit: 1647
Application No.: 10/759,244.)	Examiner: D. Romeo
Filed: January 20, 2004)	Confirmation No.: 7086
For: OSTEOGENIC DEVICE AND A)	
METHOD FOR PREPARING THE)	
DEVICE)	

COMMUNICATION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants would like to thank Examiner Romeo for the telephone conference with Applicant's representative of December 18, 2006 regarding the following. In the Notice of Allowance issued October 3, 2006 (copy attached), the Examiner attached a Form PTO-1449, originally filed with an Information Disclosure Statement in the present application on August 2, 2004. The Examiner indicated that certain references cited in the Information Disclosure Statement failed to fully comply with 37 CFR 1.98(a)(s), which requires a legible copy of each cited foreign patent document and each non-patent literature publication.

Applicants assert that the references cited in the Information Disclosure Statement filed on August 2, 2004 in the present application fully comply with 37 CFR 1.98(a)(s), as they were cited and placed in the record in parent application Serial No. 09/125,963 on September 26, 2003. A full, complete copy of the

Information Disclosure Statement filed in the parent application on September 26, 2003 is attached, along with a copy of the stamped postcard showing receipt by the U.S. Patent and Trademark Office. Applicants also submit herewith copies of the cited references for the Examiner's convenience as he requested.

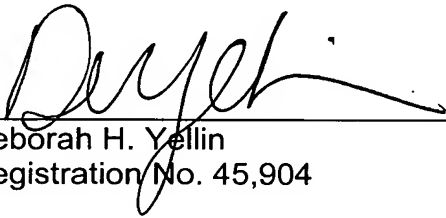
Per the telephone call with the Examiner of December 18, 2006, Applicant request that the Examiner acknowledge he has considered the attached references on behalf of the present application.

Applicants believe that a fee is not required for this submission, however, in the event a fee is necessary the Commissioner is hereby authorized to charge Deposit Account No. 02-4800, such fee.

Respectfully submitted,

Date: December 19, 2006

By: _____


Deborah H. Yellin
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

LINDHOLM *et al.*

Application No.: 09/125,963

Filed: November 24, 1998

For: OSTEOGENIC DEVICE AND A
METHOD FOR PREPARING THE
DEVICE



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) Group Art Unit: 1647

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) Examiner: David S. Romeo

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) Confirmation No.: 8371
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FOURTH INFORMATION DISCLOSURE STATEMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with the duty of disclosure as set forth in 37 C.F.R. § 1.56, LINDHOLM *et al.* hereby submit the following information in conformance with 37 C.F.R. §§ 1.97 and 1.98.

Pursuant to 37 C.F.R. § 1.98, a copy of each of the documents cited is enclosed.

The documents are being submitted within three (3) months of the filing or entry of the national stage of this application or before the first Office Action on the merits, whichever is later. Since documents are being filed within the time period set forth in 37 C.F.R. § 1.97(b) no fee or statement is required.

To assist the Examiner, the documents are listed on the attached form PTO-1449. It is respectfully requested that an Examiner-initialed copy of this form be returned to the undersigned.

Respectfully submitted,

BURNS, DOANE, SWECKER & MATHIS, L.L.P.

Date: September 26, 2003

By: Deborah H. Yellin

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Substitute for forms 1449A/PTO & 1449B/PTO

FOURTH INFORMATION DISCLOSURE
STATEMENT BY APPLICANT

ATTORNEY'S DKT NO.

032469-001

APPLICATION NO.

09/125,963

APPLICANT

Sam T. LINDHOLM *et al.*

FILING DATE

November 24, 1998

GROUP

1647

U.S. PATENT DOCUMENTS

Examiner Initials	Document Number	Kind Code (if known)	Name of Patentee or Applicant of Cited Document	Issue/Publication Date (MM-DD-YYYY)
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Examiner Initials	Document Number	Kind Code (if known)	Country	Date of Publication (MM-DD-YYYY)	Translation Yes	No
	WO 94/26322		PCT	11-24-1994		
	WO 95/24474		PCT	09-14-1995		
	WO 95/33830		PCT	12-14-1995		

NON PATENT LITERATURE DOCUMENTS

Examiner Initials	Include name of author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.
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Substitute for forms 1449A/PTO & 1449B/PTO

FOURTH INFORMATION DISCLOSURE STATEMENT BY APPLICANT

ATTORNEY'S DKT NO.
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NON PATENT LITERATURE DOCUMENTS

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Substitute for forms 1449A/PTO & 1449B/PTO FOURTH INFORMATION DISCLOSURE STATEMENT BY APPLICANT	ATTORNEY'S DKT NO. 032469-001	APPLICATION NO. 09/125,963
	APPLICANT Sam T. LINDHOLM <i>et al.</i>	
	FILING DATE November 24, 1998	GROUP 1647

NON PATENT LITERATURE DOCUMENTS

Examiner Initials	Include name of author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.
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Substitute for forms 1449A/PTO & 1449B/PTO FOURTH INFORMATION DISCLOSURE STATEMENT BY APPLICANT	ATTORNEY'S DKT NO. 032469-001		APPLICATION NO. 09/125,963
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NON PATENT LITERATURE DOCUMENTS	
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	YASKO, A.W., et al., "The Healing of Segmental Bone Defects, Induced by Recombinant Human Bone Morphogenetic Protein (rhBMP-2)," THE JOURNAL OF BONE AND JOINT SURGERY, (1992), pp. 639-670, vol. 74-A, American Ed. Journal of Bone and Joint Surgery, Boston, MA.

Examiner Signature		Date Considered	
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EXAMINER: Initial if reference considered, whether or not citation is in conformance with M.P.E.P. § 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

FIRST INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(use as many sheets as necessary)

Sheet 1 of 5

Complete if Known

Application Number 10/759,244
Filing Date January 20, 2004
First Named Inventor Sam T. Lindholm *et al.*
Examiner Name
Attorney Docket Number 032469-007

U.S. PATENT DOCUMENTS

Examiner Initials	Document Number	Kind Code (if known)	Name of Patentee or Applicant of Cited Document	Issue/Publication Date (MM-DD-YYYY)
DR	4,294,753		URIST	10-13-1981
	4,434,094		SEYEDIN <i>et al.</i>	02-28-1984
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Sheet	2	of	5	Attorney Docket Number	032469-007

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Examiner Signature	/David Romeo/ (10/01/2006)	Date Considered	
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*EXAMINER: Initial if reference considered, whether or not citation is in conformance with M.P.E.P. § 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to Applicant.

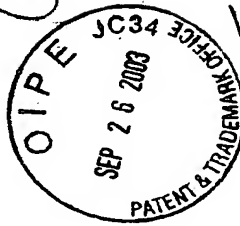
Inventor: LINDHOLM et al. Appln. No. 09/125,963 Filing Date: November 24, 1998
Docket No.: 032469-001 (Borenus & Co.) Work. Atty. DHY:cb Date: September 26, 2003



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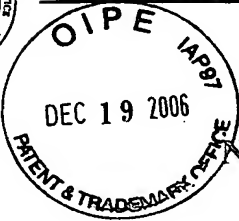


(05/03)

52



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NOTICE OF ALLOWANCE AND FEE(S) DUE

21839 7590 10/03/2006

BUCHANAN, INGERSOLL & ROONEY PC
POST OFFICE BOX 1404
ALEXANDRIA, VA 22313-1404

BUCHANAN, INGERSOLL & ROONEY PC

EXAMINER

ROMEO, DAVID S

ART UNIT

PAPER NUMBER

1647

DATE MAILED: 10/03/2006

OCT - 4 2006

DOCKETED

10-500000

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,244	01/20/2004	Sam T. Lindholm	032469-007	7086

TITLE OF INVENTION: OSTEOGENIC DEVICE AND A METHOD FOR PREPARING THE DEVICE

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	YES	\$700	\$300	\$0	\$1000	01/03/2007

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. **PROSECUTION ON THE MERITS IS CLOSED.** THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN **THREE MONTHS** FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. **THIS STATUTORY PERIOD CANNOT BE EXTENDED.** SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE DOES NOT REFLECT A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE IN THIS APPLICATION. IF AN ISSUE FEE HAS PREVIOUSLY BEEN PAID IN THIS APPLICATION (AS SHOWN ABOVE), THE RETURN OF PART B OF THIS FORM WILL BE CONSIDERED A REQUEST TO REAPPLY THE PREVIOUSLY PAID ISSUE FEE TOWARD THE ISSUE FEE NOW DUE.

HOW TO REPLY TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status above is to be removed, check box 5b on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check box 5a on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and 1/2 the ISSUE FEE shown above.

II. PART B - FEE(S) TRANSMITTAL, or its equivalent, must be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted. If an equivalent of Part B is filed, a request to reapply a previously paid issue fee must be clearly made, and delays in processing may occur due to the difficulty in recognizing the paper as an equivalent of Part B.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

1032469-000007

Publication Fee Due 1-30

PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), to: **Mail** **Mail Stop ISSUE FEE**
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or Fax **(571)-273-2885**

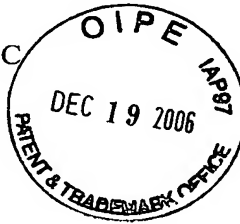
INSTRUCTIONS: This form should be used for transmitting the **ISSUE FEE** and **PUBLICATION FEE** (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

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Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

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Certificate of Mailing or Transmission

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

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(Signature)
(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,244	01/20/2004	Sam T. Lindholm	032469-007	7086

TITLE OF INVENTION: OSTEOGENIC DEVICE AND A METHOD FOR PREPARING THE DEVICE

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	YES	\$700	\$300	\$0	\$1000	01/03/2007

EXAMINER	ART UNIT	CLASS-SUBCLASS
ROMEO, DAVID S	1647	530-417000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.

☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. Use of a Customer Number is required.

2. For printing on the patent front page, list

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3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent): ☐ Individual ☐ Corporation or other private group entity ☐ Government

4a. The following fee(s) are submitted:

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☐ Publication Fee (No small entity discount permitted)
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4b. Payment of Fee(s): (Please first reapply any previously paid issue fee shown above)

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☐ Payment by credit card. Form PTO-2038 is attached.
☐ The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment, to Deposit Account Number _____ (enclose an extra copy of this form).

5. Change in Entity Status (from status indicated above)

- ☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27. ☐ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

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Date _____

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This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,244	01/20/2004	Sam T. Lindholm	032469-007	7086

21839 7590 10/03/2006

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EXAMINER

ROMEO, DAVID S

ART UNIT

PAPER NUMBER

1647

DATE MAILED: 10/03/2006

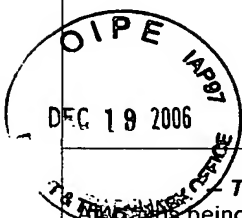
Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)
(application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 562 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 562 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.



Notice of Allowability

Application No.

10/759,244

Applicant(s)

LINDHOLM ET AL.

Examiner

David S. Romeo

Art Unit

1647

The MAILING DATE of this communication appears on the cover sheet with the correspondence address--
If this communication is being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 01/20/2004.
2. ☒ The allowed claim(s) is/are 16 and 17.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date 0804
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☒ Other See Continuation Sheet.

David S. Romeo
David S. Romeo
Primary Examiner
Art Unit: 1647

Continuation of Attachment(s) 9. Other: The information disclosure statement filed 08/02/2004 fails to fully comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. The non-complying information not being considered.. It is acknowledged that applicants indicate that the listed references were made of record in parent U. S. Application No. 09/125,963. However, inspection of the parent applications has revealed that the indicated non-complying references are not of record in the parent application. Copies of the non-complying references have not been provided.